"52.(2) The provisions of this Act relating to trade dispute .... shall apply to any matter referred to or brought to the notice of the court under the Act."

We are of the opinion that upon a true interpretation, the Industrial Court may properly award compensation where the dismissal is without just cause or excuse, if, in its considered view, it does not think reinstatement should be ordered.

We therefore agree with the decision of the High Court in Penang in *Goon Kwee Phoy* v. *J. & P. Coats (M) Bhd.*,[23] when it held expressly that compensation could be awarded to a workman who had been dismissed without just cause or excuse. But in coming to its decision the High Court also expressly disagreed with the judgment in *Hotel Jaya Puri Bhd.* v. *Union of Hotel, Bar and Restaurant Workers & Anor.*,[29] a case of a reference under section 26 of the Act. In that case, the High Court, in respect of section 30(6),

"... tried to find the basis why compensation is paid at all. If there is a legal basis for paying the compensation, the question of amount of course is very much a matter of discretion which the Industrial Court is fully empowered under section 30 of the Industrial Relations Act to fix, but where there is no legal basis for the payment of compensation, I do not think that the President can create legal right and obligation for it and, in my view, the award will be clearly be an error of law...."

If by this is meant that the Industrial Court cannot award compensation to a workman who has been dismissed without just cause or excuse, we would disagree with it. But on the facts in that case, the court was of the view that the workmen had been dismissed "neither illegally or wrongly or improperly" and there was therefore no legal basis for the award of compensation and that we entirely agree with. It would appear that the High Court in *Goon Kwee Phoy* has entirely misunderstood the *Hotel Jaya Puri* judgment in disagreeing with it.

The High Court judgment in *Goon Kwee Phoy* was itself overruled by another division of the Federal Court for reasons to be stated and the award of the Industrial Court of compensation to a workman who had had his contract of employment terminated by due notice, but without just cause or excuse, restored. This court had therefore held that the so-called "termination simpliciter" which is not grounded on any just cause or excuse would enable the Industrial Court to award compensation if it would not order reinstatement.

4. *Lastly, does certiorari lie?*

It has now been finally settled in *South-East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturers Employees Union & Ors.*[2] that the ouster provisions in section 29(3)(a) (now section 32(3)(a)) of the Act have removed the jurisdiction of the High Court to issue an order of *certiorari* for errors of law by the inferior tribunal, unless "it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity."

We have observed that whether Dr. Dutt was a workman within the meaning of the Act is a mixed question of law and fact. Whether he had been dismissed without just cause or excuse is a pure question of fact. No order of *certiorari* can possibly lie for error on these two grounds. The Hospital's cross-appeal must therefore be dismissed with costs.

As for the award of compensation, even assuming that the award contains one or more errors upon its face, the error or errors did not give the High Court jurisdiction to quash the decision of the Industrial Court. It is in this realisation of the proper law in the matter, as we understand him, that Mr. Peddie has not made the slightest attempt to address us on the quantum. The appeal is consequently allowed with costs here and in the court below. The award of the Industrial Court is restored.

Appeal allowed.

Solicitors: *Sri Ram & Co.; Skrine & Co.*

SYARIKAT PASIR PERDANA v. GOH PAK HOONG TRACTOR AND BUILDING CONSTRUCTION

[O.C.J. (Mohamed Zahir J.) August 17 & September 7, 1980]
[Kota Bharu — Civil Suit No. 151 of 1978]

Practice and Procedure — Adjournment — Message by telegram — Defendant sick — Solicitor unable to obtain plane seat to place of trial — No good reasons — Respect for court — Observations generally.

In this case on the date of hearing the defendants and their solicitors were absent. The solicitors for the plaintiffs mentioned for the solicitors for the defendants and produced a telegram from the latter reading: "Defendant fell sick. Unable to attend Court tomorrow. Have applied postponement of hearing. Kindly mention for us as counsel in charge unable to obtain seat to fly to Kota Bharu. Letter follows. NGAN AND TAN."

Held: before the court can grant an adjournment, there should be good reasons. In this case the telegram before the court was insufficient for it to decide in favour of granting an adjournment.

Observations on asking for adjournment by parties.

CIVIL SUIT.

Anthony Gomez for the plaintiffs and also on behalf of Messrs. Ngan & Tan, solicitors for the defendants.

Mohamed Zahir J.: The defendants are appealing against my order for having given judgment in default against them in favour of the plaintiffs.

The suit was fixed for hearing on August 17, 1980. The notice of trial was served on the defendants' solicitors on March 20, 1980.

On the date of hearing, the defendants and their solicitors were absent. Mr. Gomez, solicitor for the plaintiffs and one Ahmad bin Haji Abdullah, the manager of the plaintiff firm, were present. Mr. Gomez mentioned for the solicitors for the defendants and he produced a telegram sent by the solicitors for the defendants which reads as follows: —

"Defendant fell sick. Unable to attend court tomorrow. Have applied postponement of hearing. Kindly mention for us as counsel in charge unable to obtain seat to fly to Kota Bharu. Letter follows. NGAN AND TAN."

The solicitors for the defendants should have booked for a seat in the plane much earlier as they

were informed of the date of hearing as early as March. The fact that the plane tickets might not be available if the booking was not made early is common knowledge. Therefore, if a solicitor were to book the ticket only a couple of days before the trial, then he is not taking his duty to attend court seriously as he should know that there might be no seats available, particularly during festival days and in this case after the Hari Raya holidays. The solicitor's letter dated August 16 reached the court on August 18, one day after the date of hearing. In it he said he intended to travel by car as there were no plane seats but his client suddenly became sick. A sick certificate issued by a private medical practitioner was attached to the letter and appear to have been issued on August 16, one day before the hearing. It would appear, therefore, he booked the ticket only a few days before the date of travel.

The sick certificate stated that the defendant would be unfit for the proper performance of his duties. I did not know on the date of hearing, indeed even now, how sick he was. The medical certificate tells me nothing about his sickness.

The asking for adjournments by parties in this manner will always invariably place the court in a difficult position. Here is a case fixed for hearing about 5 months ago and suddenly on the date of hearing a telegram is received asking for adjournment. The court will have to consider each request for postponements on its own merits. But before the court can grant an adjournment, there should be good reasons. In this case I have only the telegram before me which I feel is insufficient for me to decide in favour of granting the adjournment.

In Kelantan in particular where some litigants engage counsel from the West Coast, there had been difficulties of this nature encountered by the court. I normally allowed adjournments by Kuala Lumpur counsel where there were delays in the MAS flights or where the flights were cancelled. But in this case the air tickets were not booked well beforehand and the defendant was absent for the reason that he was sick and there was no evidence and even on the date of hearing a medical certificate was not produced.

I also feel bad in making the default judgment. But I am of the opinion unless this is done, there would be no way of making parties respect the court. Further, I am of the opinion the aggrieved party can still apply to the court to set aside the order upon giving valid reasons and the case could be restored.

The court cannot allow all adjournments sought. If an adjournment was allowed and it turned out later that the application for adjournment was not reasonable, then the court would be placed in a very awkward position. Time is being wasted. The respect for the court is eroded. In this case, if there is an application to set aside my order, I would have to enquire the real nature of the defendant's sickness and if it was such that he could not travel, I would allow the application.

Order accordingly.

Solicitors: *Gomez & Co.; Ngan & Tan.*

PUBLIC PROSECUTOR v. JAFA BIN DAUD

[A.Cr.J. (Mohamed Azmi J.) February 23, 1981]

[Kuala Lumpur — Federal Territory Criminal Appeal No. 122 of 1980]

Dangerous Drugs — Possession — 0. 21 gms. heroin — Previous conviction — Dangerous Drugs Act, 1952, s. 12(3).

Criminal Law and Procedure — "Sentence according to law" — Meaning — Record of convicted person — Criminal Procedure Code, F.M.S. (Cap. 6), s. 173(m)(2).

The respondent was charged for being in possession of eight plastic straws containing 0.21 gms of heroin, an offence under section 12(2) of the Dangerous Drugs Act, 1952. He pleaded guilty to the charge and was accordingly convicted and sentenced to eight months' imprisonment to take effect from the date of his arrest. The Public Prosecutor appealed against the sentence and argued that the sentence was grossly inadequate on the ground that the Magistrate had failed to appreciate the seriousness of the offence and also had failed to consider that the respondent had five previous convictions, two of which were connected with drugs.

Held: the learned Magistrate had misdirected herself on the fact and the law, and the sentence of eight months' imprisonment was manifestly wrong and inadequate as a deterrent for the accused as well as for would-be offenders. In the circumstances the appeal should be allowed and sentence enhanced from eight month's imprisonment to eighteen months' imprisonment to take effect from date of arrest.

Meaning of "sentence according to law" explained.

Observations on record of a convicted person.

CRIMINAL APPEAL.

Gooi Soon Seng (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Cur. Adv. Vult.

Mohamed Azmi J. (delivering oral judgment): The respondent in this appeal was charged in the Magistrate's Court at Kuala Lumpur for being in possession of eight plastic straws containing 0.21 gms of heroin, an offence under section 12(2) of the Dangerous Drugs Act No. 30 of 1952 (Revised 1980). Under section 12(3) of the Act, the offence is punishable with a fine not exceeding $20,000 or to imprisonment for a term not exceeding five years or to both. The respondent pleaded guilty to the charge on November 26, 1980 and he was accordingly convicted and sentenced to eight months' imprisonment to take effect from the date of his arrest which was November 8, 1980. The Public Prosecutor has now appealed against sentence. The learned Deputy Public Prosecutor argues that the sentence is grossly inadequate on the ground that the Magistrate had failed to appreciate the seriousness of the offence and also had failed to consider that the respondent had five previous convictions — two of which were connected with drugs whilst the other three involved thefts.

From the grounds of judgment, the learned Magistrate had this to say on sentence:

"Considering the accused's previous conviction and especially 2 previous offences relating to opium and the amount of heroin he is charged with now — it was in my opinion fair and adequate to sentence him to 8 months' imprisonment with effect from date of arrest. It is especially because of the quantity which is 0.21 gms which made me give him an 8 months' imprisonment term instead of a longer one."

It seems clear from the grounds of judgment that although in assessing sentence the learned Magistrate